

# Supreme Court Copy

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ROBIN TYLER, et al.,

Petitioners,

S168066

v.

THE STATE OF CALIFORNIA et al.,

Respondents,

DENNIS HOLLINGSWORTH et al.,

Intervenors.

SUPREME COURT  
FILED

DEC 19 2008

Frederick K. Orinck Clerk

Deputy

## RESPONDENT'S ANSWER TO AMENDED PETITION FOR EXTRAORDINARY RELIEF

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**ANSWER**

Respondents State of California and Edmund G. Brown Jr., in his official capacity as Attorney General for the State of California, (collectively, Respondents)<sup>1/</sup> answer Petitioners Robin Tyler et al.'s (collectively, Petitioners) Amended Petition for Extraordinary Relief as follows:

**INTRODUCTION**

1. Respondents admit that the identities of the petitioners seeking extraordinary relief from this Court. However, for lack of information, Respondents neither admit nor deny the remainder of the allegations of paragraph 1. Respondents recognize that there are many gay and lesbian

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1. In an order dated November 19, 2008, this Court granted Secretary of State Debra Bowen's request to be dismissed as a respondent in the *Tyler* case.

couples who married following this Court's decision in *In re Marriage Cases* and are concerned regarding the legal status of their marriages and that other same-sex couples who wish to marry in California are now barred from doing so by Proposition 8.

2. Respondents admit that the identities of the petitioners seeking extraordinary relief from this Court. However, for lack of information, Respondents neither admit nor deny the remainder of the allegations of paragraph 1. Respondents recognize that there are many gay and lesbian couples who married following this Court's decision in *In re Marriage Cases* and are concerned regarding the legal status of their marriages and that other same-sex couples who wish to marry in California are now barred from doing so by Proposition 8.

3. Respondents admit the allegations of paragraph 3. However, Secretary of State Debra Bowen was dismissed as a respondent in this matter pursuant to this Court's order dated November 19, 2008.

4. Respondents admit that the Proposition 8 amended the California Constitution to state that "[o]nly marriage between a man and a woman is valid or recognized in California." However, because the language of Proposition 8 speaks for itself, Respondents neither admit nor deny the accuracy of Petitioners' characterization of the proposition in paragraph 4.

Respondents further deny the allegations of paragraph 4 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

5. Respondents admit that the exercise of original jurisdiction by this Court is appropriate in this case.

6. Respondents deny the allegations of paragraph 6 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

7. Respondents deny the allegations of paragraph 7 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

### **FACTS**

8. Respondents admit that the California Supreme Court issued an opinion in *In Re Marriage Cases* (2008) 43 Cal.4th 757. However, because the opinion speaks for itself, Respondents neither admit nor deny the accuracy of Petitioners' characterization of the opinion in paragraph 8, subsections (a) through (i).

9. For lack of information, Respondents neither admit nor deny the allegations of paragraph 8. However, Respondents admit that thousands of gay and lesbian couples married following the decision in *In re Marriage Cases*, *supra*, and before the passage of Proposition 9.

### **CLAIMS ASSERTED**

10. Respondents deny the allegations of paragraph 10 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

11. Respondents deny the allegations of paragraph 11 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

12. Respondents admit that the California Constitution contains an equal protection clause. However, because the California Constitution speaks for itself, as do the cases interpreting that section of the California Constitution, Respondents neither admit nor deny the accuracy of Petitioners' characterization of the California Constitution in paragraph 12. Respondents deny the allegations of paragraph 12 on the basis that they constitute legal argument or state legal conclusion to which no response is now required.

13. Respondents admit that the California Supreme Court issued an opinion in *In Re Marriage Cases* (2008) 43 Cal.4th 757. However, because the opinion speaks for itself, Respondents neither admit nor deny the accuracy of Petitioners' characterization of the opinion in paragraph 13.

Respondents also deny the allegations of paragraph 13 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

14. Respondents deny the allegations of paragraph 14 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

15. Respondents deny the allegations of paragraph 15 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

16. Respondents admit that the California Constitution contains a section describing the initiative process. However, because the California Constitution speaks for itself, Respondents neither admit nor deny the accuracy of Petitioners' characterization of the initiative process described in paragraph 16. Respondents also deny the allegations of paragraph 16 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

17. Respondents deny the allegations of paragraph 17 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

18. Respondents deny the allegations of paragraph 18 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

19. Respondents deny the allegations of paragraph 19 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

20. Respondents deny the allegations of paragraph 20 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

21. Respondents deny the allegations of paragraph 21 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

22. Respondents deny the allegations of paragraph 22 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

23. Respondents admit that the California Supreme Court issued an opinion in *In Re Marriage Cases* (2008) 43 Cal.4th 757. However, because the opinion speaks for itself, Respondents neither admit nor deny the accuracy of Petitioners' characterization of the opinion in paragraph 23.



Respondents also deny the allegations of paragraph 22 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

24. Respondents admit that the California Supreme Court issued an opinion in *In Re Marriage Cases* (2008) 43 Cal.4th 757. However, because the opinion speaks for itself, Respondents neither admit nor deny the accuracy of Petitioners' characterization of the opinion in paragraph 24. Respondents also deny the allegations of paragraph 23 on the basis that they constitute legal argument or state legal conclusions to which no response is now required

25. Respondents deny the allegations of paragraph 25 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

26. Respondents deny the allegations of paragraph 26 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

27. Respondents deny the allegations of paragraph 27 on the basis that they constitute legal argument or state legal conclusions to which no response is now required.

**PRAYER FOR RELIEF**


WHEREFORE, Respondents pray as follows:

1. That the Amended Petition for Extraordinary Relief be granted; and
2. For such further and other relief as this court may deem proper.

Dated: December 19, 2008

Respectfully submitted,

EDMUND G. BROWN JR.  
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capacity

**DECLARATION OF SERVICE BY FACSIMILE & U.S. MAIL**

Case Name: ***Robin Tyler and Diane Olson v. The State of California, et al.***

Case No.: **S168066**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business. My facsimile machine telephone number is (916) 324-8835.

On December 19, 2008, I served the attached **RESPONDENT'S ANSWER TO AMENDED PETITION FOR EXTRAORDINARY RELIEF** by transmitting a true copy by facsimile machine, pursuant to California Rules of Court, rule 2.306. The facsimile machine I used complied with Rule 2.306, and no error was reported by the machine. Pursuant to rule 2.306(g)(4), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereof fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 19, 2008, at Sacramento, California.

Rowena Aquino

Declarant

A handwritten signature in cursive script, appearing to read 'Rowena Aquino', written over a horizontal line.

Signature